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1. General Introduction and Contextualisation

We have just voted on what is perhaps, up to now, and shall be, one of the most important laws of this Legislature. A law that structures the community that we are. [...] We have introduced justice into the law, and so many citizens born in Portugal who would up to now have been foreigners, will henceforth have access to Portuguese nationality.¹

During the month of February 2006, the Portuguese parliament approved a new nationality law, which radically altered the regime for the attribution and acquisition of Portuguese nationality by immigrants and by the children of immigrants. The law had a crucial impact on the integration process of foreigners in the country, whether acquisition of citizenship is seen as the culmination of a process of integration or simply one stage of a continuous journey. Nationality defines the identity of a country and of its citizens, as well as being a legal status granting all of the rights of full citizenship. Therefore, naturalisation can be considered to be the manifestation *par excellence* of integration.

Citizenship is, at its heart, to quote Hannah Arendt, “the right to have rights”. It is a fundamental status that allows a person to live their life in the modern era. The concept of citizenship was developed in European legislation during the nineteenth century, when the distinction between citizens and foreigners replaced the feudal distinction between subjects and foreigners to the realm. During the great waves of European migration to the Americas in the nineteenth century, the concept of national citizenship did not cause serious problems, as it was relatively easy to become a citizen in the receiving countries of the “new world” and because, as a general rule, all of those born in the new country acquired nationality more-or-less automatically. These countries pursued an ideology of forming a new community, and continue even today to apply naturalisation policies that centre around this concept. Since then, however, in developed countries, the concept and the content of nationality have undergone significant changes.

As a consequence of the Second World War, during the era of reconstruction in Europe, migrations began to follow different routes; migrants from Southern Europe were incorporated into the Northern European labour market and many non-European migrants began to arrive at the ports and airports of Western Europe. It was only in the wake of the decolonisation process of Portuguese-speaking Africa during the seventies that Portugal began to receive its share of immigrants from outside Europe. Nevertheless, the issue of national citizenship for new arrivals and their descendents did not emerge as a political priority, given that many immigrants from the former colonies already had Portuguese citizenship, and so the debate around the substantive rights of citizenship did not gain importance during this period. However, many complications emerged in relation to the new matrix of citizenships spawned by the decolonisation

¹ Vitalino Canas, Deputy of the Socialist Party, *Diário da Assembleia da República*, I Série, No. 091, 17.02.2006, p4317. Except where stated otherwise, this translation, and all of those that follow, are the author's own.

process and, specifically, deriving from the 1975 law that effectively restricted Portuguese nationality to descendents of Portuguese emigrants.

During the past two decades, many European countries have seen the need to alter their nationality laws in order to adapt the legislative framework to the new realities of immigration. During the nineties, immigration from Portuguese-speaking Africa, Brazil and Eastern Europe began to make its presence felt in Portugal, and the question of the impact of this migration on Portuguese national identity gained relevance. It became clear that many immigrants, attracted by the opportunities in the labour market, or motivated by reasons of personal safety, would remain in Portugal permanently, raise their families and perhaps become Portuguese, both in the legal and the symbolic sense.

In spite of these emerging realities, it was only in 2005 that the Portuguese parliament began to debate access to Portuguese nationality and to emphasise the need for a new law to regulate the naturalisation of immigrants, descendents of immigrants and emigrants, and spouses and partners of Portuguese citizens. Deputies from various political parties, from left to right, referred to the difficult situation of descendents of immigrants who, despite the fact that they had never known any country other than Portugal, did not have access to Portuguese nationality, and either inherited the foreign nationality of their parents or found themselves stateless.

On 17 April 2006, the new Portuguese law on nationality was published (Organic Law no. 2/2006), recognising the new realities of immigration to Portugal and breaking with the tradition of legislating only for descendents of emigrants. The new law granted a subjective right to nationality to a much broader group of immigrants and descendents. This study provides a detailed analysis of the new nationality law and its implications, not only in Portugal but also in the European context, by means of a discussion in relation to citizenship and nationality theories. The relationship between integration and naturalisation is examined on the basis of recent literature and fieldwork.

The study reflects the tension in the theoretical analysis between nationality as a common identity, on the one hand, and nationality as simply a set of rights and duties in relation to the State, on the other. In essence, naturalisation is the only means of ensuring all available rights in a country and so for some analysts it represents full integration. Nevertheless, of course there will always be cases of foreigners who are more integrated than certain naturalised citizens, casting doubt on the objective of having a regime for the naturalisation of foreigners. There is as yet no consensus among commentators as to whether naturalisation is the logical end of a process of integration or merely a step along the way. It is shown here that in Portugal naturalisation represents, both for the State and for foreigners who are naturalising, access to a set of rights, as well as more symbolic integration, all within a process that has been significantly facilitated by the 2006 law.

2. Objectives of the Study and Methodology

In view of the scarcity of studies on the new nationality regime in Portugal, on the attitudes of immigrants towards this change and on the impact of the new law, this research analyses the effects of the implementation of the new nationality law for immigrants and descendants of immigrants, posing the question of whether this law in fact breaks with traditions and makes Portugal into a fairer country for long-term residents, for second and third generations, and for new citizens.

The fieldwork consisted of consultation with a total of 26 people, comprising 20 people interviewed individually, among them immigrants in the process of acquiring nationality; leaders of immigrant associations; deputies of the Portuguese parliament and an official from the Central Registry Office. Almost all of the interviews with immigrants took place at the National Immigrant Support Centre (CNAI) in the city of Lisbon, while applicants were waiting to visit the branch of the Central Registry Office there. A focus group meeting was also organised at the CNAI with six representatives of immigrant associations. The nationalities of the participants in the interviews and the focus group meeting were Portuguese, Brazilian, Ukrainian, Cape Verdean, São-Tomean, Togolese, Guinean (Bissau), Romanian, Indian, Chinese and Peruvian. The intention was to obtain a broad range of opinions and attitudes on the current procedure for the acquisition of nationality in Portugal.

The methodology of this study has been developed on the basis of four inter-related sections: (1) the contextualisation of the current nationality policy and the development of the legal framework within the colonial and post-colonial history of Portugal; (2) a comparison of the Portuguese case with other European Union countries and in relation to the options of the various Member States in relation to nationality policy; (3) the current state infrastructure for the acquisition of nationality in Portugal; and (4) the implementation of the new law as an element of integration policy and as experienced in practice by immigrants and other key actors.

Some situations that are also foreseen in the law on granting Portuguese nationality – adoption, reacquisition and loss of nationality, and the attribution of nationality to the children of Portuguese emigrants abroad – are not the subject of analysis in this study. Additionally, and in contrast to Pereira da Silva's 2004 study also for the Immigration Observatory in Lisbon, the present work does not intend to analyse the principle of equal rights, as the Constitution has not been changed in the interim. This study is therefore to a certain extent a continuation of Pereira da Silva's 2004 work in which certain limitations to the previous legal framework were emphasised and recommendations were formulated that were subsequently incorporated into the new nationality law in 2006. It has now been five years since the coming into force of this new regime with substantial alterations in the attribution and acquisition of Portuguese nationality, and therefore the effective impact of these changes on the lives of immigrants will be examined.

In order to complement the legislative analysis, this study examined the divergence between the laws on paper and their effective application in practice. In order to assess nationality policies, Niessen proposes various practical criteria, including clear procedures, training for officials, naturalisation campaigns, effective communication

with the applicant, bureaucratic efficiency and an inter-agency system, reduction in costs and waiting times, and justification and the right to appeal (Niessen in: Carrera, 2006: 35-36). The new Portuguese nationality law and the infrastructure for applications are evaluated in reference to these criteria, among others.

The study draws on three main categories of sources, and the results and the conclusions are arrived at from the use of this diversity of materials:

I. The first category refers to published secondary sources, including the national and international bibliography, in order to contextualise the study and to expand upon the context of the new nationality law in Portugal, taking account of the fact that the country belongs to the group of reference of European Union countries.

The secondary international literature is the basis for the first chapter on the acquisition of nationality in the European Union, and informs later chapters by locating Portugal within the European polity. Portuguese secondary sources provide information and analysis above all in relation to the previous nationality regimes and the understanding of nationality and citizenship in Portugal, while the few more recent references inform the examination of the new law.

II. Official sources, such as legislative documentation and parliamentary debates, as well as statistical data, represent a second category, providing an insight into the state infrastructure and an overview of trends in the acquisition of nationality in Portugal and more specifically of the impact of the change in the law on nationality applications and naturalisations.

Official data, such as data from the Institute of Registries and Notaries (IRN), from the National Statistics Institute (INE) and from the Foreigners and Borders Service (SEF), provide the statistical foundations for the study. Statistics on the implementation of language tests for the purposes of naturalisation are considered, together with general data from SEF on immigration in Portugal. More specifically, naturalisations are registered in SEF's Integrated Information System, while all attributions and acquisitions are registered by the Directorate-General of Justice Policy (DGPJ) and processed and collated by the INE. The texts of the out-dated laws, of amendments, and of the new law, facilitate examination of the legislative developments and of any possible discrepancy between the letter of the law and its implementation. Parliamentary debates and other official declarations assist in comprehending the attitudes of political actors in relation to the new law.

III. A third category comprises the qualitative results of interviews and of the focus group meeting, providing a more in-depth analysis of the attitudes of those concerned.

The fieldwork represents an essential contribution of this study and was based on questionnaires developed specifically for the purposes of the assessment. The interviews were conducted with immigrants who were in the process of naturalisation and immigrants who did not want to or could not acquire Portuguese nationality. In addition, two deputies of the Portuguese parliament were interviewed, one official from the Central Registry Office and three association leaders. The questionnaires applied in these interviews were the same format for all and comprised questions on the process of acquisition of nationality in itself, on the relationship between nationality and integration

and on motivations for acquiring or not acquiring nationality. All the immigrants interviewed were from outside the European Union, apart from one Romanian association leader, in view of the fact that it is likely that most European Union citizens no longer have many reasons to naturalise, as discussed in what follows, and therefore they appear in very low numbers in the statistics on naturalisations.

The focus group was composed of leaders and representatives of immigrant associations. The members were invited to discuss and debate the new nationality law for an hour and a half, and to examine the relevance of the new nationality policy for the integration of immigrants in Portugal. The topics of the meeting were defined by the questionnaire and the results were analysed in relation to general negative or positive perceptions of the new law among some communities of immigrants and the relevance of the nationality policy as a tool for integration.

Combining secondary literature, a statistical and legislative analysis, and fieldwork, this study provides an extensive and in-depth treatment of the attribution and acquisition of Portuguese nationality, seeking to bridge the gap that exists in understanding the phenomenon of the naturalisation of immigrants and their descendents. The combination of various methodologies in a multi-disciplinary approach facilitates better planning and the further development of policies on the basis of the recommendations included in the final chapter.

3. The New 2006 Nationality Law

The new Nationality Law – Organic Law no. 2/2006 of 17 April – was approved by the Portuguese parliament without any votes against it, and came into force with the passing of Decree Law no. 237-A/2006 of 14 December. The new Portuguese nationality regime set out in the Decree Law was approved by four-fifths of the deputies of the parliament. The Government’s stated aim was to provide Portugal with “a fairer and more humane Nationality Law, which will contribute to a more cohesive society”. The law was presented as the most liberal nationality law in the European Union (*Diário da Assembleia da República*, 14-10-2005: 2460), and politicians of various parties made reference to the humanist and universalist traditions of Portugal (*Diário da Assembleia da República*, 17.02.2006: 4314; 4324).

The competence for the attribution of nationality was transferred from the Ministry of the Interior to the Ministry of Justice. Legal residence in Portugal can now be attested to by means of any valid immigration status with the exception of a short-term visa, and not only by means of Residence Authorisations as in the previous regime. The principle of *ius soli* for those born on Portuguese territory as children or grandchildren of immigrants was reinforced, facilitating the access of the Portuguese-born to Portuguese nationality. The right to nationality of origin is now granted to all those born in Portugal, provided that at least one of their parents was also born in Portugal or that at least one of their parents has been living in Portugal with legal immigration status for at least five years prior to the birth of the child.

Furthermore, the 2006 Law establishes the right to Portuguese nationality for those born in Portugal to parents who are non-nationals, do not have legal immigration status and were also born in Portugal, the so-called principle of double *ius soli*, as is also the case in Spain and France. Double *ius soli* is recognised in the French civil code and in Spanish legislation, and was a central characteristic of the reforms of the German nationality law in 1999 (von Münch, 2007: 215). Since the 1980s, many European states have begun to consider that they could not tolerate generation after generation of non-citizens, a phenomenon that creates a distinct sub-class of non-citizens that is incompatible with democracy and social cohesion (Hansen and Weil, 2001: 13; Klusmeyer and Aleinikoff, 2001: 4). The practical result of this stipulation is that undocumented status does not have to be inherited after the third generation – and, as examined below, there is further access for the second generation who have parents who are undocumented. Of course it is clear that it would be much better to never penalise the children of parents who do not have permits in relation to access to the nationality of the country they are born in, and therefore it is recommended that nationality is attributed to all children born in Portugal to at least one parent who is resident, regardless of whether or not the parent has legal immigration status. This is the case in the USA, for example, although a debate is ongoing in relation to so-called “anchor babies”: a concept that seeks to designate the pull factor of the possibility for parents with undocumented status to obtain American nationality for their children.

Discretion in naturalisation procedures was restricted, granting more extensive *droits subjectifs* to nationality. Children of foreigners – “the second-generation undocumented” – born in Portugal, even if they are undocumented, may naturalise as long as they have habitually resided in Portugal for the previous ten years. In Canadian citizenship law, for

example, when duration of residence is calculated for the purposes of naturalisation, “for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence” (Citizenship Act, RSC, c C-29, Part I (1) (c) (i)). The possibility in Portugal of naturalising after ten years of undocumented residence is in fact slightly less restrictive than the Canadian system, as, following the Canadian logic, this would amount to five years of documented residence, that is, less than the requirement for documented residence for the acquisition of nationality by applicants with permits (six years) in Portugal.

The process and the attendant procedures have been simplified and bureaucracy reduced, with the aim of preventing excessive bureaucracy from becoming “a friend to clandestine immigration” (*Diário da Assembleia da República*, 14.10.2005: 2462). Before the new law, the question had been posed as to whether the delays in the processes had been “a bureaucratic strategy to discourage foreigners from acquiring Portuguese nationality” (Oliveira and Inácio, 1999: 12). On the basis of this improvement, applicants are now theoretically seen more as service-users, who should accordingly be granted a high level of service. There have indeed been significant improvements, particularly in relation to waiting times, since 2007, as set out below.

One of the intentions of the new law was to adapt the legislative framework to the European Convention on Nationality, specifically in relation to Art. 5(1), which prohibits discrimination on the basis of national origin, and Art. 6(3), which foresees the acquisition of citizenship by those who were born and legally reside on the territory. The means of subsistence criterion was removed pursuant to the interpretation of Art. 13(2) of the Portuguese Constitution, which bans discrimination on the basis of economic situation.

The draft law was presented by the Government as a response to the demographic transformations that Portugal was undergoing, aiming to introduce a balance into nationality policy that had been absent before the new law came into force. It was in these terms that the law was described in parliament, rather than as a response to national security concerns (*Diário da Assembleia da República*, 14.10.2005: 2457). The implementation of the new regime was a pragmatic decision, and at the same time, it represented a long-term vision. For two Portuguese scholars, it manifested “the recognition of the incompatibility between democratic norms and values and the restrictions on access to nationality, as well as the recognition of the negative effects of those restrictions on national and social cohesion” (Pena Pires and Pinho, 2009: 133).

The analysis of the provisions for *ius sanguinis*, or the inheritance of Portuguese nationality from one or two Portuguese parents, is beyond the scope of this study, as the focus here is on the attribution or acquisition of Portuguese nationality by immigrants or the children of immigrants. *Ius sanguinis* includes the provisions of the new law for the naturalisation of people with one ancestor who had Portuguese nationality to the second degree in a direct line.

4. *Ius Soli*

The Government that introduced the new law saw *ius soli* – birthright citizenship - as a continuation of a Portuguese tradition that had simply been interrupted in 1981 (*Diário da Assembleia da República*, 14.10.2005: 2457). According to the Preamble to the law: “From among these amendments, and due to the relevance it assumes, particular attention is drawn to the strengthening of the principle of *ius soli*, which constitutes the realisation of the objective [...] of recognising citizenship status for those who have strong links with Portugal” (Decree-Law no. 237-A/2006).

Under the new Portuguese nationality regime, there are five principal ways of obtaining national citizenship:

- (1) Attribution by effect of law;
- (2) Attribution by effect of will;
- (3) Acquisition by effect of will;
- (4) Acquisition by effect of full adoption; and
- (5) Acquisition by effect of naturalisation.

Each of these, with the exception of adoption, may imply the granting of Portuguese nationality to an immigrant or the child of an immigrant. It is necessary to highlight, however, that under the current law in Portugal, there is no right to nationality through pure *ius soli*, independently of other criteria. The Minister of the Presidency emphasised that there could not be automatic and pure *ius soli* because this would represent “an invitation to clandestine immigration” and he wanted to prevent such a “pull factor”. He added that this possibility generally does not exist in EU countries and that Portugal has the responsibility for managing an EU border (Ministry of the Presidency, 18.10.2005). Indeed, the last European Union country to apply pure *ius soli* was Ireland, where the provision was removed by popular referendum in 2004.

Nevertheless, the Government was criticised by the Left Block (*Bloco da Esquerda*) political party for confusing nationality policy with immigration policy in this sense (*Diário da Assembleia da República*, 14.10.2005: 2457-2458). In fact, this is a manifestation of a practice that is almost universal in the European Union, whereby nationality is instrumentalised for the purposes of immigrant admission policies – to combat the “pull factor”. As mentioned above, this is not the case in the USA. The Court of Justice of the European Union (CJEU) judgement in the “Zambrano” case on 8 March 2011 will have the unintended effect of reinforcing the link between the *iure soli* acquisition of nationality and combating the “pull factor”, as it grants the right to legal residence and employment to both parents of a minor European citizen in the country of citizenship of the child (CJEU, Case C-34/09).

There are three situations in which the *attribution* of Portuguese nationality may take place *iure soli* – by means of the law of the soil:

At the time of birth, that is: by virtue of the fact of having been born on Portuguese soil, nationality is granted at the time of birth. Children born in Portugal to parents who are not Portuguese will be granted Portuguese nationality as long as one of the parents was also born in Portugal and has been resident in the country, regardless of whether or not they have a permit. This scenario represents the attribution of nationality by effect of law. This form of attributing nationality is called double *ius soli*, as outlined above, because both the child and at least one of the parents were born in Portugal. Another

consequence of the increased possibility to obtain nationality for children is the effect this has on the residence status of the parents, as the parents of a Portuguese child may not be removed from Portugal (Piçarra and Gil, 2009: 23), and, pursuant to the Zambrano Case, have the right to live and work in the country, although the practical impact has yet to be experienced in full.

If the child's parents were not born in Portugal, the child will still be granted Portuguese nationality if, at the time of birth in Portugal, at least one of the parents has been residing legally in Portugal for at least five years. In this situation, a declaration is required that the child wishes to be Portuguese, as this represents the attribution of nationality by effect of will.

The third scenario of nationality attribution *iure soli* at the time of birth is the case of stateless children born in Portugal, which is also by effect of law. In order to further prevent statelessness, naturalisation is also granted to people who have lost Portuguese nationality and have never had any other nationality. Some children born abroad must acquire nationality by means of a declaration or registration, but in general they are automatically recognised under the new, as under the old, regime.

In these three cases, these people are Portuguese by origin, therefore they do not need to provide the evidence and documentation necessary for naturalisation. The Minister of Justice sees the reinforcement of *ius soli* for the children of immigrants as “an important factor in combating social exclusion” (Decree Law no. 237-A/2006).

5. *Ius Domicilii*

The right to *acquire* nationality by naturalisation is granted subject to different conditions of residence in Portugal according to whether the applicant is an adult or a child. The only distinction in terms of rights between those who are born Portuguese citizens and those who are naturalised is that those who are naturalised may not be elected President of the Portuguese Republic. In the case of foreigners who are adults, they may naturalise if they have resided legally in Portugal, with any type of permit, for at least six years. Children may acquire nationality by naturalisation as soon as one of their parents has been living in Portugal legally for at least five years or as soon as a child born in Portugal has completed the first four years of primary school in Portugal. This constitutes a *droit subjectif* to naturalisation, consecrated in the law and reinforcing the rights of children who spend their formative years in Portugal.

Portugal therefore has, like all of the pre-2004 EU Member States, *ius soli* regulations subsequent to birth, but what is less common is to offer access to nationality through *ius soli* subsequent to birth while the person in question is still a minor. This process is comparable to the French system, whereby the causal assumption is that French education *ipso facto* leads to an active personal identification with France and the desire to have French nationality (Thomas, 2002: 20). This principle represents a significant contrast with the old ideologies of blood rights, recognising the condition of citizenship as an effect of nurture and not of nature. However, the possibility of the acquisition of nationality by children who have attended school in Portugal represents a mixture of *ius soli* and *ius domicilii*, given that the children who have attended school and apply for naturalisation must also have been born in Portugal. Although this may seem paradoxical, it is to be welcomed that the possibility exists for children born in Portugal to acquire nationality *iure domicilii*, as it is one of the recommendations of the European Convention on Nationality. It is notable, however, that there is still no possibility that is independent of the residence of the parents and of the place of birth, a provision that would be pure *ius domicilii* for children.

Under the new regime, as under the old one, the naturalisation of children of a father or mother who is undergoing naturalisation takes place by means of a declaration by the minor or incapacitated person, safeguarding the principle of unity of nationality within the same family. This contrasts with the situation in Spain and Ireland, for example, where children have to wait and apply for nationality only after their parents have been granted it. It is advisable that the rights of children in relation to nationality imply the acquisition of nationality *ex lege* or automatically, as sometimes the parents either do not know of the rights or duties of their children or they are not in a position to spend time and money on the process. It is conceivable that the parents may not know of their child's duty to issue a declaration and so the child does not acquire nationality and, in the worst case scenario, becomes stateless. Of course there would have to be the option of choosing not to accept Portuguese nationality for the child on the part of the parents of very young children or on the part of the child if they are older. As also under the old regime, full adoption by a Portuguese citizen implies Portuguese nationality for the adopted child.

It seems obvious that the children of immigrants born in Portugal would qualify for national citizenship, seen in Bauböck's terms: "the children of settled immigrants who

grow up in the receiving country are obviously stakeholders in that society's future [...] They are members of society from birth and ought to be recognised as such" (Bauböck in *Canadian Diversity*, 2008: 10). This recognition of the rights of minor immigrants and children of immigrants was shown as very positive in the most recent recommendation of the Council of Europe on nationality (CM/Rec (2009) 13 on the nationality of children), which underlined the importance of changes in nationality laws that would grant children better access both to the nationality of their parents and to that of the state where they were born and in which they live. The recommendation further requires the facilitation of the acquisition of nationality by the children of parents who were also born in the receiving country.

There are just two additional requirements that are applicable in cases of naturalisation: the applicant must prove their knowledge of the Portuguese language in one of the recognised ways (described below) and they may not have been convicted of a crime punishable with a prison sentence of three years or more, according to Portuguese law. The former is justified, as it would be expected that existing national citizens would have this knowledge, while the second is less balanced, as a certain number of national citizens would not be able to fulfil this requirement. The requirement for the criminal record of the applicant will be further discussed below.

The discretion that previously existed in relation to an "effective connection to the community" was abolished by the new law, representing the recognition that discretion should be avoided wherever possible. Similar requirements exist in other European countries in relation to levels of integration. The 2006 Law transferred the "onus of proof" in relation to the connections of the applicant with Portuguese society from the applicant to the Ministry of Justice. It falls to the Ministry to prove the *non-existence* of an effective connection with the national community, therefore it is not the applicant who must prove the *existence* of this connection. The Minister may only oppose the acquisition of nationality by effect of will or by effect of naturalisation within one year of the fact on which the acquisition of nationality depends. In this case, the applicant must make a declaration in relation to the existence of the effective connection to the national community. Another ground for opposition to the acquisition of nationality is exercising public functions that are not predominantly technical or the provision of non-compulsory military service in a foreign state. Proceedings in relation to nationality take place at the Administrative and Fiscal Courts, regulated by the Statute of the Administrative and Fiscal Courts, the Process Code at Administrative Courts and other complementary legislation.

There is further discretion, in a positive sense, in relation to people who have provided a special service to the State, who do not have to fulfil the standard requirements apart from the criminal record stipulation. These are "those foreigners who have provided or are called upon to provide relevant services to the Portuguese State or to the national community". One immigrant association leader consulted for the purposes of this study commented that this method of naturalisation – usually applied to sportspeople – is quite controversial. In his words:

Let's just say that there is a business here with Portuguese nationality and a certain interest on the part of those who govern. People who need to work in order to support their family have to wait for years and years. An average player who doesn't even make it onto the national team of his country of

origin is granted nationality supposedly on the basis of national or public interest...”

This may represent a source of frustration for many immigrants who wish to naturalise, because there is a perception that the process is much easier for sportspeople, and this lends an appearance of injustice and that the system is vulnerable to manipulation.

A novelty in the 2006 legislation is the granting of nationality *iure soli* to the children of immigrants who are undocumented, with a strong element of discretion expressed in the legislation with the phrase “[t]he Government may grant nationality”. The children must have been born in Portugal and at least one of their parents must have habitually resided in the country during the ten years immediately preceding the application. There is further discretion for the naturalisation of people who are descendents of Portuguese citizens or are members of communities of Portuguese origin, under the stipulations for the acquisition of nationality *iure sanguinis*.

There is one category of people for whom there should be discretion in the positive sense – those who have been granted international protection and stateless people. With the exception of the Netherlands and the United Kingdom, all of the other pre-2004 EU Member States have such provisions (Waldrauch 2006: 92). The inclusion of such provisions are also stipulated in the Geneva Convention on the Status of Refugees and in the European Convention on Nationality. The absence of this possibility indicates a gap in the legislative base that guarantees rights for refugees and beneficiaries of subsidiary protection, which should be immediately corrected. Even though there are currently no significant arrivals of refugees or asylum applicants to Portugal, the legislative framework should allow for the possibility of this situation changing in the near future by providing more favourable terms to refugees in accessing Portuguese nationality.

Naturalisation through marriage represents a combination of the right to nationality based on marriage to a national, and right through residence, or *ius domicilii*. The duration of a marriage for a non-national spouse to acquire nationality is three years, which is the maximum in the European context and was not changed with the new law. Nationality is acquired by effect of will on the part of the foreign spouse. Despite some attention in the media, a study published in 2009 concluded that there was no evidence that the phenomenon of so-called “marriages of convenience” was very widespread in Portugal (Raposo and Togni, 2009).² Therefore it is not necessary for the law to be so restrictive. The rate of marriages between foreigners and Portuguese citizens continues to rise; by 2007, the rate as a percentage of the total of marriages in Portugal was 12.3%. The majority of mixed marriages in that year were between Portuguese men and foreign women (INE, 2008: 90).

De facto union between a homosexual or heterosexual couple is now recognised in Portugal for the purposes of the nationality law, in accordance with the new Art. 3 (Organic Law no. 2/2006), and the necessary duration of the union is the same as that for marriage – three years. The applicant may only acquire nationality subject to a recognition action of the *de facto* union at the Civil Court. There are similar stipulations in Dutch legislation (de Groot in: Council of Europe, 2001: 89). In January 2010, the Portuguese parliament legalised marriage for homosexual couples – with the exclusion

² See also: Grassi, Marzia (2006). “Formas migratórias: *casar com o passaporte* no espaço Schengen. Uma introdução ao caso de Portugal” in *Etnográfica*, vol. 10, pp. 283-307.

of adoption, but it was only in July of the same year that the Institute of Registries and Notaries officially began to register marriages between people of the same sex where one or two spouses are of foreign origin. This may lead to an increase in naturalisation through marriage for people who were not previously authorised to get married.

6. Requirements

In general, access to nationality has been facilitated and there are less requirements. Two of the three requirements classified as obstacles (Oliveira and Inácio, 1999: 20) were abolished from the naturalisation process, namely moral and civil rectitude and means of subsistence, and so only knowledge of the language remains. The explicit intention of the new regulation was to reduce the requirements, eliminating redundant or ambiguous requirements, generally reducing the “arbitrary character that had caused so much litigation” and removing the excessive discretion (*Diário da Assembleia da República*, 14.10.2005: 2458). The intention to reside in the country after acquiring nationality is not required, unlike in some other EU member states. This situation is reasonable in view of the fact that such a requirement could be highly subjective if it were to be applied, as people’s intentions tend to change repeatedly throughout their lives.

The requirement of six years of regular residence for the naturalisation of first-generation immigrants is justifiable, although Portugal is not among the most open Member States in the EU-15 in these respect, as, for example, Belgium requires three years and Ireland five. The new stipulation that periods of residence with any type of permit (and not only with a Residence Authorisation) is a positive amendment that is in keeping with international recommendations (Walmsley in: Council of Europe, 2001: 100). Art. 15 of the Portuguese Constitution privileges both Portuguese-speaking foreigners and EU citizens in relation to certain rights.³ However, the requirement of six years of residence for citizens of Portuguese-speaking countries and ten years for all others was altered in the new law in favour of citizens of other countries; under the new law, six years of legal residence are required of all applicants, regardless of nationality of origin. The solution adopted by the nationality law was not to privilege any applicant, in conformity with the European Convention on Nationality, abolishing any discrimination on the basis of nationality. The main opposition party at the time, the Social Democratic Party (PSD), did not agree with this decision, calling for a distinction between different categories of immigrants that would grant nationality to citizens of Portuguese-speaking countries and of the European Union after four years of residence.

A reduction in the duration of residence required for the naturalisation of European Union citizens exists in Austria, Italy and Sweden (Bauböck, 2008: 5). There is a similar distinction in Spanish legislation in relation to immigrants from Latin America. In Italy, the requirement of ten years of residence is reduced to four years for EU citizens, while in Sweden there are reduced residence requirements for citizens of Nordic countries. In all cases, this represents a cultural discrimination, facilitating the process only for those immigrants who are considered to have affinities with the receiving country. In fact, as mentioned above, the European Convention on Nationality

³ Article 15(3): “Save for access to appointment to the offices of President of the Republic, President of the Assembly of the Republic, Prime Minister and President of any of the supreme courts, and for service in the armed forces and the diplomatic corps, rights that are not otherwise granted to foreigners are accorded, as laid down by law and under reciprocal terms, to the citizens of Portuguese-speaking states who reside permanently in Portugal.” Article 15(5): “Under reciprocal terms, the law may also accord citizens of European Union Member States who reside in Portugal the eligibility to vote for and stand for election as Members of the European Parliament.” Constitution of the Portuguese Republic, 7th Revision, 2005 (official translation).

prohibits discrimination in nationality legislation, including discrimination based on national or ethnic origin. However, it does allow for “preferential treatment”. The Portuguese law avoids any of these distinctions, adopting one sole residence requirement for all immigrants, regardless of their origins. This is considered the fairest solution and is to be welcomed.

Paradoxically, the set of rights granted in Portugal to European Union citizens, and – though to a significantly lesser extent – to citizens of the countries of the Community of Portuguese-Language Countries (CPLP), may constitute a potential disincentive for these citizens to acquire Portuguese nationality (Oliveira and Inácio, 1999: 47). This study did not analyse perceptions of immigrants from the European Union. In fact, together with the Maastricht Treaty, the Citizenship Directive 2004/38/EC (30 April 2004) to a certain extent removes the need for EU citizens to naturalise in another EU member state, as the Directive grants the unconditional right to permanent residence in any Member State to citizens and their families (Kostakopoulou, 2009: 7). The acquisition of nationality in another Member State therefore does not significantly improve the legal status of an immigrant (Bauböck, 2008: 5), although it does grant the right to vote in national elections. Furthermore, as part of a distinct phenomenon that would also apply to some EU citizen immigrants in Portugal, studies have shown that in general immigrants from countries with higher GNPs tend not to naturalise (DeSipio, 1987: 399).

The new law foresees the possibility for people born in Portugal to foreign parents who do not have legal status to acquire Portuguese nationality. Adopting the principle of *ius domicilii* for this category, the law seeks to combat the inheritance of illegality in the country by the second and subsequent generations, and the associated vulnerability of some children and young people. The relevant article of the law foresees that young people in these circumstances have to prove that they have resided in Portugal for the ten years immediately prior to the application.⁴ Despite the fact that there is some concern that this process of analysis of proof of residence may be subject to some legislative discretion, this section of the law revives an *ius soli* trend that has almost completely disappeared in other European Union countries. Immigrants who were not born in Portugal will, however, still have to wait a further six years from the moment at which they regularise their status, before they can apply for Portuguese nationality.

In all countries of the European Union, including Portugal, the criminal record of the naturalisation applicant must be submitted, a requirement that represents a part of the so-called “integrity clauses” in nationality policies (Waldrauch, 2006: 41). The applicant must prove that they have not been sentenced to three or more years in prison, in accordance with Portuguese law. Although in a limited sense this may be justified, the absence of a time limit does not seem fair for a former criminal who has potentially been rehabilitated. Even less so, if one takes into account the fact that a national citizen understandably does not run the risk of losing their nationality if they commit a crime. Refusal to grant nationality to people with a criminal record in no way improves the security situation in the country if the crime was in any case not sufficiently serious to lead to deportation and if the applicant fulfils all of the other requirements (Bauböck in *Canadian Diversity*, 2008: 11). It is therefore recommended that the criminal record

⁴ Proof of ten years of residence without legal status in Portugal may be provided by means of documents that attest to contributions made to the social security and tax systems, school attendance or housing conditions, or by means of a valid and recognised travel document.

requirement be removed from the legislation, because the guiding principle should be that crimes are dealt with through the penal system and not through nationality law (cf. Kostakopoulou, 2008: 137). In a fairer and more positive provision, a period of rehabilitation is foreseen in the new nationality law in relation to crimes with a sentence or sentences of between one and three years. In this case, the nationality process is postponed for five years, a provision that could be generalised to all sentences.

Criminal record certificates are required from all applicants, from Portugal, from their country of birth, from their country of nationality, and from all countries in which they have resided. The Central Registry Office has the possibility of directly contacting foreign representations in Portugal in relation to the civil status of applicants and to the identification of the organisation that issues the criminal record certificate (Presidência do Concelho de Ministros and ACIDI, 2009: 36). Nevertheless, in practice this requirement causes serious problems and delays in the process, above all for people who have lived in various different countries, and for some people it is impossible to obtain these necessary documents, rendering them unable to exercise their right to Portuguese nationality. Children who apply for Portuguese nationality are also required to provide criminal record certificates, despite the fact that they are minors, and even from countries that they have the nationality of through their parents, but have never actually been to themselves.

The other integrity clause stipulates that the applicant must not constitute a threat to public order or to the interests of the state – this is a requirement that exists in all EU-15 countries. However, Portugal in general does not seem to share a certain fear in relation to security and a perception of the failure of integration, both of which have become increasingly widespread in other Western European countries. Among the motives cited by Huddleston for the instigation of reform of nationality policies are: the reduction of immigration flows, strengthening national security, reassuring public opinion, and party politics (in *Canadian Diversity*, 2008: 13). In fact, in the Portuguese context none of these has assumed great importance, as there is little support for the idea of reducing immigration flows and immigrants are not generally seen as a threat to national security. The main Portuguese political parties tend not to instrumentalise immigration for political purposes.

The third major requirement, together with residence and criminal records, is proof that the applicant has knowledge of the Portuguese language. There are three ways of proving this knowledge: by means of a certificate issued by an official, private or cooperative educational establishment in Portugal or in a country that has Portuguese as an official language; by means of a certificate in Portuguese as a foreign language recognised by the Ministry of Education; or by passing the official test taken in Portugal or at a Portuguese consulate abroad.

Multiple nationality is permitted under the new law, as under the previous one – and, as in other European states with similar provisions, only Portuguese nationality is taken into account in relation to Portuguese law. This principle is in accordance with European-wide trends in permitting multiple nationality, although this possibility is not universally available in all EU Member States. Multiple citizenships favour relations between countries of origin and countries that receive immigrants, promoting the link between migration and development, among other positive effects.

Among the EU-15, apart from Portugal, only Belgium and the Netherlands do not require proof of means of subsistence (Waldrauch, 2006: 44). Requirements for means of subsistence for citizenship are comparable to the situation after 1826 in Portugal, when income was a requirement for the right to vote (Ramos, 2004: 551). During the parliamentary debates on the new law, the Left Block (BE) party was strongly opposed to this requirement, declaring that “[t]o be or not to be Portuguese must not depend on having more or less money” (*Diário da Assembleia da República*, 14.10.2005: 2467). The abolition of this requirement in Portugal was a very positive step, removing socio-economic discrimination from the process.

7. Procedures

The procedure for the acquisition of nationality by effect of will, by adoption or by naturalisation, with the attendant processes, costs €175, while for minors or incapacitated persons it costs €120. Official recognition in person of the signature of declarations or requirements in relation to nationality processes, as well as the certificates, photocopies and necessary communications to fulfil the obligations of the new nationality regime, are now free-of-charge. The translation of all documents submitted, which is required in order to process the declarations and requirements if they are in a foreign language, may represent an additional cost. In addition, if the authorities have any doubt as to the authenticity of documents issued abroad, the cost of confirmation by the foreign authorities is borne by the applicant. In Europe, the costs of the naturalisation procedure vary widely, but may be anything up to €1,800, which indicates that the cost in Portugal is reasonable. It must not be overlooked, however, that salaries in Portugal are low by EU-15 standards, and the unemployment rate is currently increasing. Therefore the cost of the process (and particularly if children's nationality processes must also be paid for) may still prove an obstacle to some of the poorer members of Portuguese society.

If the Central Registry Office wishes to defer the naturalisation procedure, they must take that decision within thirty days of receipt of the application, and inform the applicant within twenty days. The applicant then has twenty days to rectify the situation. Information requested from the Judicial Police or the Foreigners and Borders Service (SEF) must be provided within thirty days, or a maximum of ninety days. The Registry Office then issues a decision on the application within forty-five days and the process is submitted for a final decision to the Minister of Justice.

According to the Government's *Second Annual Report on the Implementation of the Plan for Immigrant Integration, May 2008 – May 2009*, the Nationality Department of SEF did not register any delays in the processing of requests for nationality in 2008, and the decisions were issued by the Central Registry Office. During that year, the average time for processing nationality acquisition applications internally was three months for minors and six months for adults. During 2008, SEF improved the average response time from their side from 53 working days in January and 69 working days in March, to 14 days in October and 18 days in December (more details at www.nacionalidade.sef.pt). In August 2008, the Central Registry Office began using a new computer system to manage the processes so that the procedures would be more efficient (Presidência do Concelho de Ministros and ACIDI, 2009: 36).

One of the objectives of the new nationality regime is to “make the daily life of many citizens easier” (Decree Law no. 237-A/2006). All of the applications for nationality by naturalisation are forwarded directly to the Ministry of Justice by the Central Registry Office, with direct lines of communication with SEF under the Ministry of the Interior. The competence to evaluate the nationality applications was transferred to the Ministry of Justice – the competence had previously been assigned to SEF – in order to change any public security rationale that may have been associated with the previous nationality law (Ministro da Presidência, 18.10.2005). The role of the Registry Office is now quite similar to that of its Spanish equivalent.

There are not many documents that must be attached to the application, but sometimes they are difficult to obtain. The birth certificate must bear the official stamp of the district where the applicant was born, and in some cases it is necessary for the applicant to actually travel to this district in order to obtain the necessary document, which could be located in a country far away from Portugal, which is expensive to travel to. The criminal records from the country where the applicant was born, from the country of citizenship of the applicant, and from all of the countries in which they have resided, may also be difficult to obtain if the consulate or embassy in Portugal does not issue them. The document issued by SEF that proves legal residence in Portugal for at least six years, as well as the Portuguese criminal record, may simply be communicated to the Central Registry Office through official channels. A discretionary exemption may also be granted from presenting documents that are not available (Piçarra and Gil, 2009: 33).

The Ministry of Education has the responsibility for managing the system to grant a certificate of competence in Portuguese. The Administrative and Fiscal Courts have assumed the competence for disputes in relation to nationality and new rules were introduced for the procedures at the courts and for disputing decisions taken by the Central Registrar.

As a consequence of the new law, the Central Registry Office created a new service branch at the National Immigrant Support Centre (CNAI) in Lisbon city centre, and later also at the CNAI in the city of Porto, in order to process nationality applications at that location. The High Commission for Immigration and Intercultural Dialogue (ACIDI, IP), which runs the CNAIs, also organised an information campaign at a national level to inform immigrants about their rights in relation to the new nationality law. ACIDI provides information and advice through its website, pamphlets and its information phoneline “SOS Imigrante”. A special support office was also created at the CNAI in order to promote and facilitate the acquisition of nationality. These infrastructural developments would suggest that the Portuguese government has the aim (such as is found in Canada or Australia) of ensuring that immigrants become national citizens, an approach that is currently less common in the European Union.

The applications can be submitted at any Nationality Desk at the Porto Central Archive and at the various Citizens’ Shops and branches of the Central Registry Office across the country, as well as at Portuguese consulates. In 2009, the Registries phoneline extended its activities to include nationality applications on working days. Compared with data from 2006, the International Organization for Migration (IOM)’s evaluation of ACIDI services showed that in 2007 the acquisition of nationality had become an increasingly important reason for immigrants to seek out the services of the CNAIs in Lisbon and Porto, in second place overall after the renewal of visas (Abranches and Alves, 2008).

The applications can also be sent by post, and in the future, it will be possible to send them electronically. The Institute for Registries and Notaries has also reached agreements with immigrant associations to authorise them to provide information on the processing of nationality applications and to forward applications to the Central Registry Office. Computer systems were set up for information-sharing between the relevant authorities and the Central Registry Office, in order to avoid the necessity for the applicant to gather all of this information her- or himself.

The active promotion of the acquisition of nationality as a tool for integration policy in Portugal has more in common with integration policies in Canada and Australia than in other EU Member States, as mentioned above (Bauböck *et al*, 2006b: 16; Kraler, 2006: 40; Feldblum, 2000: 481). It follows then that the nationality law is analysed here as an integral part of overall Portuguese integration policy, which finds its clearest expression in the triennial *Plans for Immigrant Integration* (Presidência do Conselho de Ministros and ACIDI, 2007 and 2010), as we will see in the section that follows. The new nationality law aimed to create better conditions for greater cohesion and social integration, seen as an “exercise in openness and responsibility which our status as a European country requires” (Ministry of Justice, 20.05.2007).

8. Applying for Portuguese Nationality

With a view to enhancing our understanding of the acquisition of nationality in Portugal over the past few years under the new law, this section analyses the impacts of the new regime, examining whether it has created a nationality policy that is more equitable.

In presenting the proposed law, the Ministry of the Presidency declared in parliament that the intention was to “correct a very serious social injustice and to provide, by way of access to the status of citizenship, full integration in Portuguese society to people who, despite the fact that they have a strong connection to the national community, have remained amputated of their rights and affected by the consequences of an intolerable factor of exclusion” (Minister of the Presidency, *Assembleia da República*, 14.10.2005). It has now been almost five years since the new nationality law came into force and therefore this study seeks to examine the efficacy of this policy in achieving the objectives of restoring their rights to people from whom they had been “amputated” and in mitigating this factor of exclusion, both for those who were born in Portugal and for immigrants *per se*.

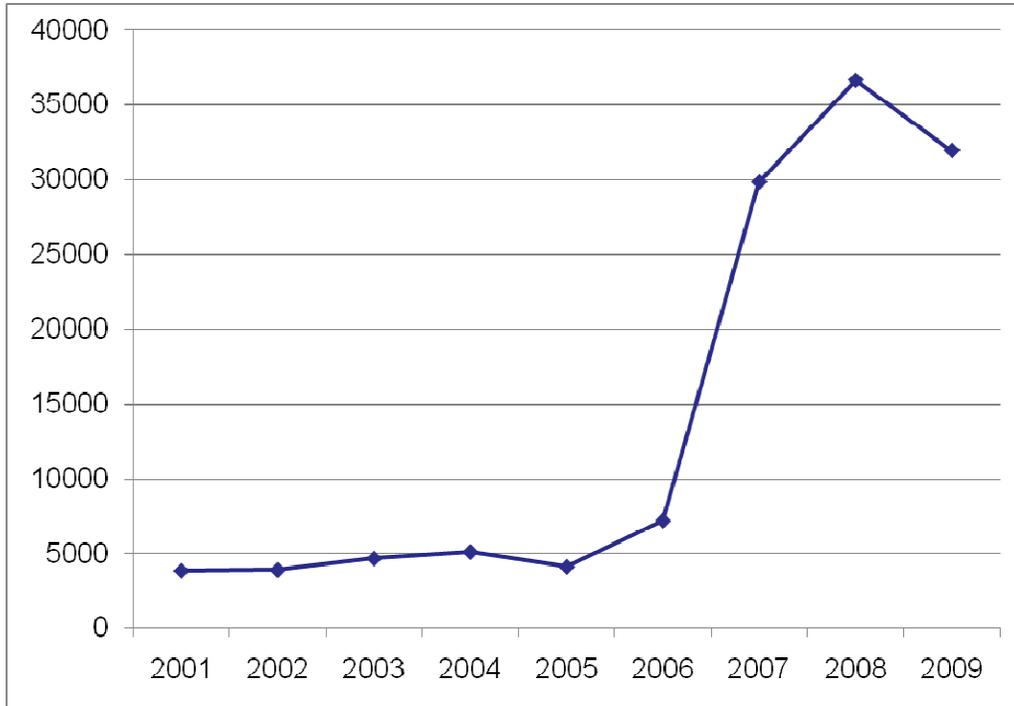
Recognising Portugal as a country of immigration, the 2006 law regulates the acquisition of citizenship to promote the full integration in Portuguese society of people with “a strong connection to the national community”. Naturalisation is formally analysed as a question of citizenship and not of policing or border management, reflecting “the set of rights and duties inherent in the status of national” (Ministry of Justice, 15.12.2006). The declarations of the Ministry in relation to the objectives of the new law present a concept of national citizenship that is more inclusive. But does this concept translate effectively into a more inclusive reality? The official data analysed in this chapter show the concrete effects of the new law on the acquisition of nationality by immigrants and children of immigrants, representing a crucial source in the analysis of the implementation of the new policy.

Until 2000, there were no more than 2,000 nationalisations per year in Portugal. Between 2000 and 2001 there was an increase to more than 2,500, which subsequently stabilised. As of 31 December 2009, the population of Portugal was estimated at 10,637,713 (INE, 2010). Applications for Portuguese nationality increased significantly in the wake of the introduction of the new law, in the context of an almost continuous reduction in the rate of migratory increase, to a low point of +0.14% in 2009 (www.ine.pt).

For the period between 15 December 2006 and the end of the first trimester of 2008, 48,164 applications for nationality were registered at the Central Registry Office. The majority of these applications were for the *acquisition* of nationality by naturalisation (25,511) by adults (21,549) and by children (3,961). A further 15,849 applications were registered for the *attribution* of nationality, divided equally between foreigners born in Portugal and children of Portuguese citizens born abroad. The remaining applications (6,804) were for the acquisition of nationality through marriage, by children of those naturalised, and others. Figures 1-3 below clearly demonstrate the impact of the changes

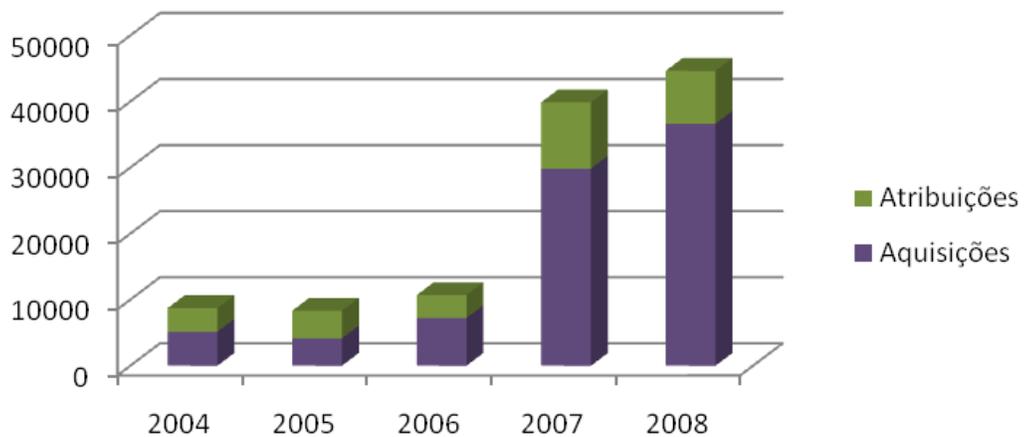
in the nationality regime in terms of numbers of applicants and numbers of new Portuguese citizens.

Figure 1: Numbers of naturalisations in Portugal, 2001-2009



Composed on the basis of data from the Directorate-General of Justice Policy, based on statistics from the Central Registry Office, 2011.

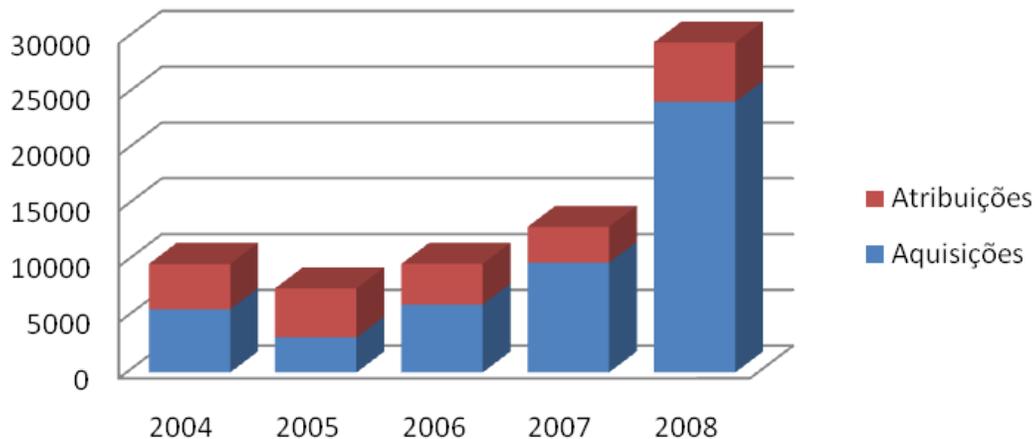
Figure 2: Applications for the attribution and acquisition of nationality



Composed on the basis of data obtained directly from the Directorate-General of Justice Policy, 18.09.2009.

Figure 2 above does not show the number of actual naturalisations, but rather the desire among immigrants and their children to acquire or be attributed nationality, as it refers to applications submitted. The increase in the number of applications is even more than the increase in actual naturalisations. Between 2004 and 2008, the number of applications for acquisition of nationality increased seven-fold, from 5,141 to 36,640. The data for 2007 and 2008 confirm the success of the Government's intention to improve access to nationality, although they also demonstrate significant delays in processing the applications.

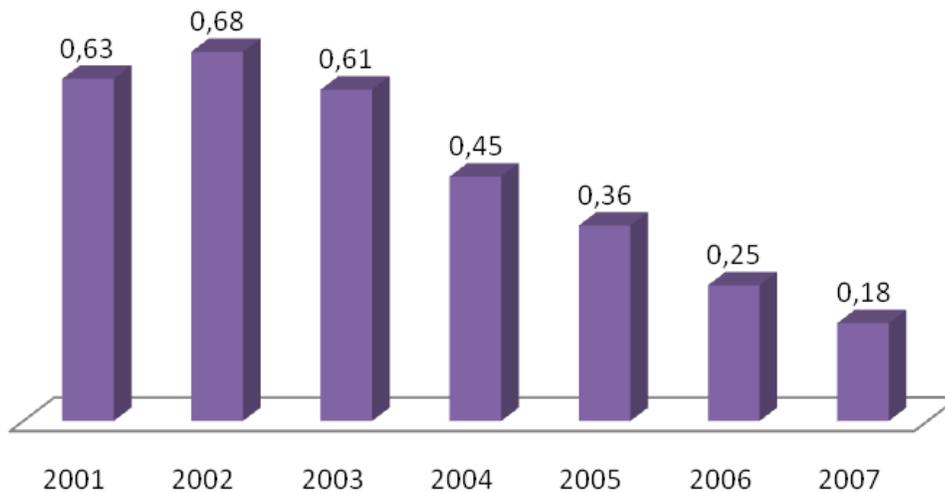
Figure 3: Attribution and acquisition of nationality



Composed on the basis of data obtained directly from the Directorate-General of Justice Policy, 18.09.2009.

Acquisitions and attributions of citizenship increased dramatically in the wake of the introduction of the new law, which is all the more remarkable as it was in the context of a continuing reduction in the rate of migratory increase, down to a low point of +0.14% in 2009 (see Figure 4 below; www.ine.pt). There was an increase in people eligible under the new law, but also an increase in applications from people who were already eligible under the previous law, but who have only applied for nationality during recent years because the process is easier and there has been an improvement in the infrastructure.

Figure 4: Rate of Migratory Increase in %



Source: Composed on the basis of data in Carrilho and Patrício, 2008.

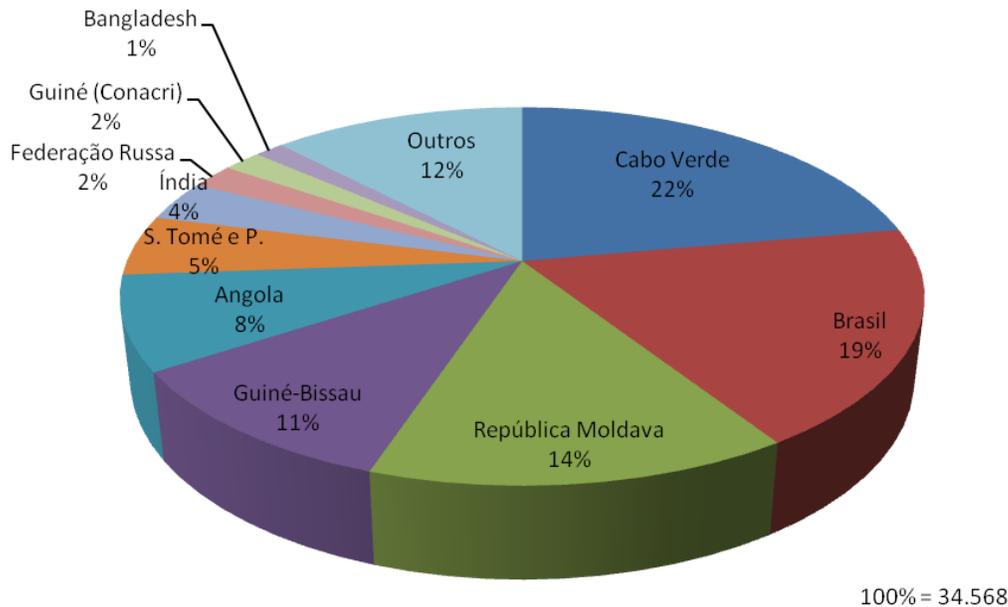
In relation to the stock of naturalised immigrants, the last census in Portugal for which data are available, in 2001, shows that there were 424,757 Portuguese nationals among the total of 651,472 people who were born abroad, a percentage of 65.2% (Instituto Nacional de Estatística, 2001: lix; 368). However, it should be noted that this number includes an unknown percentage of descendants of Portuguese citizens who were born abroad. The results of the 2011 census will provide an important source to analyse this percentage in relation to the current situation.

While taking into account the clear increase in naturalisations, it is necessary to continue to monitor the statistics in order to understand the actual effects in the mid- to long-term. It is still possible that in the future, the rates will drop back down to the pre-2006 numbers due to a certain “tradition” of not acquiring Portuguese nationality. Statistics in Germany, for example, show that immediately after the amendments to the nationality regime there was a significant increase, followed by a decrease from 2001 to 2007 (Howard, 2009: 143).

The most common nationalities of origin among those who applied for Portuguese nationality in 2008, by order of importance, were Cape Verde, Brazil, Moldova, Guinea (Bissau) and Angola (see Figure 5).⁵

⁵ Followed by São Tomé and Príncipe, India and Ukraine. Serviço de Estrangeiros e Fronteiras (2009), “Estatística dos Pareceres de Nacionalidade Emitidos pelo SEF em 2008” (available online at: <http://www.nacionalidade.sef.pt/docs/EstatSite2008.pdf>); Serviço de Estrangeiros e Fronteiras (2008), “Estatística dos Pareceres de Nacionalidade Emitidos pelo SEF em 2007” (available online at: <http://www.nacionalidade.sef.pt/docs/EstatSite2007.pdf>).

Figure 5: Distribution of Nationality of Origin of Applicants



Composed on the basis of “Estatística dos Pareceres de Nacionalidade Emitidos pelo SEF em 2008” (2009).

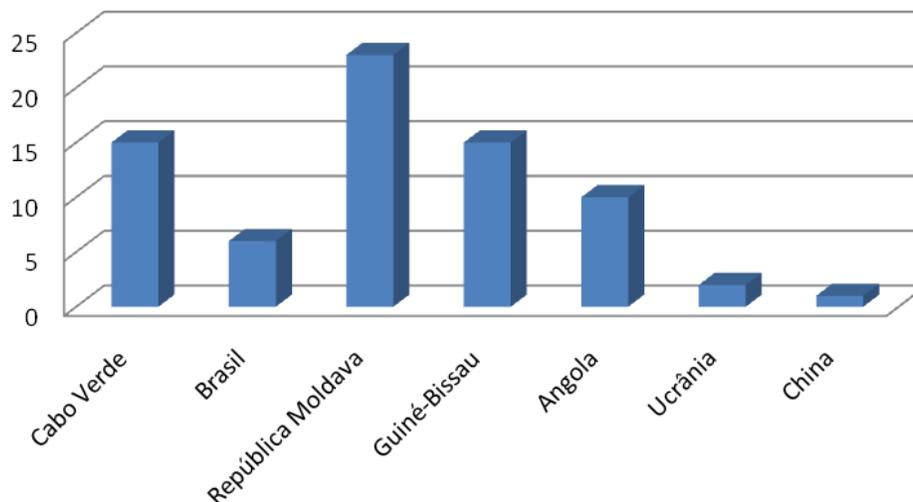
The data also indicate the significance of another aspect analysed in this study, related to the nationalities of origin of new Portuguese citizens. It should be noted that the most common nationalities in the applications do not directly correlate with the largest immigrant communities in Portugal. Ukraine, for example, does not appear among the first five nationalities of origin of nationality applicants and China does not appear in the first eight. This is specifically related to the fact that these countries of origin do not permit dual nationality. The rates vary according to nationality, as is also the case in other Western European countries (Constant *et al*, 2007: 7). In fact, nationality represents a reliable indicator of the propensity to naturalise. At an international level, the rates also tend to vary according to levels of social, economic and cultural integration, and the costs and conditions of naturalisation (Bauböck, 2008: 5).

The rate of naturalisation is calculated here on the basis of all resident foreigners and not only those who are eligible. In 2008, the resident foreign population in Portugal was 440,277. This gives a rate of 8% of the population of immigrants (those who were not born in Portugal) who applied for nationality, a significant increase on the maximum of 1.5% up to 2003.⁶ In European terms, this naturalisation rate is significantly high. If we disaggregate the data according to nationality, we see that the rates for the five main nationalities of origin are: Cape Verde – 15%; Brazil – 6%; Moldova: 23%; Guinea (Bissau) – 15% and Angola 10%, while the rates for Ukraine and for China, certainly due to the lack of authorisation of dual nationality, are 2%, and 1%, respectively.⁷

⁶ Calculated on the basis of: SEF (2009) “Estatística dos Pareceres de Nacionalidade Emitidos pelo SEF em 2008” and SEF (2009). “População Estrangeira em Território Nacional, 2008”. This rate is roughly equivalent to the contemporary rate in Sweden, for example (Scott in: Bevelander and DeVoretz, 2008: 108).

⁷ Calculated on the basis of: SEF (2009) “Estatística dos Pareceres de Nacionalidade Emitidos pelo SEF em 2008” and SEF (2009). “População Estrangeira em Território Nacional, 2008”.

Figure 6: Percentages of acquisition of Portuguese nationality among different nationalities of origin, 2008



Composed on the basis of: SEF (2009) “Estatística dos Pareceres de Nacionalidade Emitidos pelo SEF em 2008” and “População Estrangeira em Território Nacional, 2008”.

Furthermore, the authorities of the countries of origin have a significant influence on the duration of the process of acquiring nationality, as they issue some of the relevant certificates and criminal records. There are authorities in some countries, and their consular services in Portugal, that may take more time than others to process the issuing of the documents, which contributes to a delay in the process. In accordance with Art. 48 of the Civil Registry Code, documents issued by embassies and consulates may substitute original documents from countries of origin, but only if they are available to the civil registry or archived at the Civil Registry Office.

Between 2007 and 2009, the Central Registry Office held meetings with representatives of the governments of Moldova, Ukraine, Nepal and Ivory Coast, and also with the Association of Togolese Nationals, in order to explain and clarify the procedures. The consulates of Cape Verde issue certificates in Portugal for Cape Verdean applicants, while the Brazilian consulate will certify and authenticate documents downloaded from the internet (Presidência do Conselho de Ministros and ACIDI, I.P, 2010: 44-45). In this context, it is recommended that further meetings are arranged with the representatives of the governments of the other countries of origin of the largest communities of immigrants in order to improve this process.

Portugal does not require applicants for nationality to take a citizenship test, as is the case in some other EU Member States (eg. United Kingdom, Netherlands, Denmark, Austria). For the Dutch government, for example, the applicant must prove that she/he is culturally *ingeburgerd* (naturalised) (de Groot in: Carrera, 2006: 21). Also in France, it is necessary to be culturally assimilated: “Nul ne peut être naturalisé s’il ne justifie de son assimilation à la communauté française...” (Code Civil, arts. 21°-24°). In accordance with the *Staatsbürgerschaftsprüfungsverordnung* (Citizenship Test

Regulation) in Austria, the applicant must pass a test to prove his/her knowledge of Austrian democracy and history, as well as regional history. The British test, based on the book *Life in the United Kingdom*, includes questions on the European institutions and Union law, as well as on British history and society. For decades, the government of the United States of America has been concerned with the objective of preventing immigrants from being naturalised without being “americanised” (DeSipio, 1987: 392).

The imperative to reassure the public that new citizens are culturally, socially and politically integrated is not in evidence in Portugal. The assumption is that the necessary cultural and social integration occurs naturally as a consequence of years of residence, and a preoccupation with integration or assimilation in relation to citizenship cannot be discerned in the parliamentary debates and the mainstream media. However, it was exactly in this context that the opposition Christian Democrat political party CDS-PP (in government at the time of writing) criticised the then government for believing that “the mere passage of time” was sufficient to prove an effective connection with the country (*Diário da Assembleia da República*, 14.10.2005: 2461).

One of the conditions of access to Portuguese nationality, as mentioned above, is to prove knowledge of the Portuguese language. For the CDS-PP in the parliamentary debates, the language question was crucial: “How can you explain that someone can be Portuguese without speaking our language?!” (*Diário da Assembleia da República*, 14.10.2005: 2475). Applicants for Portuguese nationality who cannot prove their knowledge in any other way must take a language test in accordance with Administrative Circular no. 60/2011 of 2 February 2011. The Circular replaces the previous system of evaluating knowledge at the offices of notaries, of the secretaries of municipal councils and of the directors of central cultural services in Lisbon and Porto, which was a more discretionary system.

The models for the tests are established by law, together with the cost of the test - €15 in Portugal and €20 abroad. There is a separate model test for applicants aged 10 to 14, while the main model test applies to all those aged over 14. The two models contain a section on reading comprehension and another section on written expression, and last 60 minutes. The model for children younger than 14 has appropriate content for this age group, including ads, information on recreational activities and a short text about an animal. The model for applicants older than 14 contains real examples of notices and ads and a simple text about an emigrant. The texts both correspond to level A2 in the Common European Framework of Reference for Languages.⁸ A result of 50% or more is sufficient to pass the test. The Ministry of Education in Portugal, or Portuguese consulates abroad, will then issue pass certificates. The system is managed by the Directorate-General for Innovation and Curricular Development and by the Office for Education Statistics and Planning, both within the Ministry of Education.

After the first official Portuguese language test, the Ministry of Justice stated that the Minister “was impressed by the level of knowledge of the Portuguese language and culture shown by the applicants who, in some cases, showed that they had already read entire novels in Portuguese. For the Minister, this interest in Portuguese culture demonstrates that immigrants have a great interest and even a great love for the idea of being Portuguese” (ACIDI, 21.01.2007). The Minister therefore explicitly connected

⁸ This framework consists of six reference levels, from A1 (basic) to C2 (fluent) (Council of Europe, 2001).

learning the language with appreciation of Portuguese culture and a certain level of assimilation.

During the second official language test in February 2007, 2,806 people were registered and 1,916 people took the test, 71% of whom were male. Around 84% of the people who took the test passed. The majority were from the Republic of Moldova, Ukraine, Bangladesh and Russia (ACIDI, 29.03.2007). Throughout 2007, a total of 12,830 people took one of the six official tests organised, and during the first two tests (of a total of five) in 2008, there was a significant increase to around 12,279 people registered (Presidência do Conselho de Ministros and ACIDI, IP, 2008). In 2009 there were only four tests (www.dgidec.min-edu.pt). Taking the official test of 15 May 2009 as an example, results were available for schools in 16 of the 18 districts of Continental Portugal, as well as schools in Madeira, the Azores, China, France, Italy, Mozambique, United Kingdom, Senegal and Switzerland.

The test is only required of applicants older than 10 who can read and write and do not have any other way to prove their knowledge. Children under 10 and people who have literacy problems may take tests adapted to their capacities. The specific history of illiteracy in Portugal (see Cabral, 2003: 42-3) provides the backdrop for a more flexible test for people with specific needs. For people who are illiterate, the website for the State language tests suggests recourse to the programme “Recognition, Validation and Certification of Competences”, which provides short-term training courses. The Ministry of Education indicated that there was a special test or the possibility of having training certified for people who had literacy problems and wished to acquire nationality. In relation to people with special educational needs, the Ministry explained that the applicant must “simply indicate on the registration form that they have special educational needs so that the schools adapt the test to the needs identified” (Lusa, 05.01.2008).

Many of those interviewed for this study complained about the frequency of the tests. In correspondence with the Directorate-General for Innovation and Curricular Development during research for the study in mid-2009, the authority indicated that they still had not set a date for the next test, but that they intended to organise them every three months (e-mail, 04.06.2009). A website was created for the tests in order to manage the system: www.provalinguaportuguesa.gov.pt, but both at the time of finalisation of the study (October 2010), and at the time of writing of this Summary (July 2011), the website was unavailable, preventing registration and access to the tests for possible applicants. This may be related to difficulties with the test organised on 9 October 2010 and delayed access to results.⁹

Knowledge of the Portuguese language is very important for someone to participate in Portuguese society, and the level required, A2, is not excessively difficult. The application of a language test, or a requirement for proof that the applicant speaks and writes Portuguese, seems fair and justified due to the need for a method of communication between the state and its citizens, while at the same time recognising citizens’ rights to maintain use of their native language(s).

⁹ Neves, Céu (23 November 2010). “Autoridades investigam prova de português para imigrantes” in *Diário das Notícias*.

In fact, the language test, together with the requirement for a certain period of residence, represents the most appropriate and most objective way to establish the level of integration of an applicant. The inclusion of an additional “integration test” along the lines of tests in other EU Member States is neither necessary nor reasonable, as such a test will always be subjective and imprecise.

The first *Plan for Immigrant Integration*, for 2007-2009, a three-yearly government action plan overseen by the High Commission for Immigration and Intercultural Dialogue (ACIDI, I.P.), foresaw five measures in relation to access to citizenship and political rights for immigrants. Only one measure directly relates to the acquisition of nationality, measure 109: “Information campaign on the new Nationality Law and the creation of a support network for processing applications for the acquisition of nationality”, which was the responsibility of ACIDI, I.P., the Institute of Registries and Notaries (IRN) and the Ministry of Education. The specific indicators for achieving the goals of the measure were:

- 5.000 Portuguese language tests carried out in 2007;
- 40 schools involved in support and organisation of the process in 2007;
- 200 teachers involved in 2007;
- 5 protocols signed in 2007;
- Creation of a service branch of the Central Registry Office in Porto;
- 15% reduction in waiting time for obtaining Portuguese nationality;
- 15,000 applications for nationality submitted in 2007 (this was exceeded by more than 33%, with 21,481 foreigners becoming Portuguese during in that year);
- 400 officials and members of immigrant associations involved in training sessions at a national level;
- 20,000 information sessions to support the submission of nationality applications;
- 20 awareness-raising sessions carried out by socio-cultural mediators;
- 5,000 telephone calls answered for the support and clarification of questions related to nationality.

The plan also includes Measure 70, which refers to the rationalisation and increased efficiency of work in the area of Registries and Notaries, which is the responsibility of the Directorate-General of Consular Affairs and Portuguese Communities, the SEF and the IRN: “Increase and improve communication channels between the competent Portuguese and foreign authorities in relation to the relevant issues, rationalisation and de-bureaucratisation of processes.” Another intention was to dispense with birth certificates for people from countries where the registries have been destroyed, but only in the case of immigrants who already have Portuguese residence permits, the only goal that was not achieved. The Government further incentivised services for the diplomatic and consular representations in Portugal and started to accept the documents that they issue to substitute documents from countries of origin. Additionally, they sought to harmonise procedures in different registry offices.

The *Annual Implementation Report* on the Plan in 2008 presented the results for the first year, in accordance with the established indicators. In relation to the creation of “nationality counters” in November 2007, five cooperation protocols were signed between the IRN and immigrant associations for the purposes of providing clarifications and submitting applications.¹⁰ As of the end of 2009, a further 36 nationality counters

¹⁰ Immigrant Solidarity Association, Immigrant Support Association, Jesuit Refugee Service, Brazil House in Lisbon and Olho Vivo Association.

had been created at the Civil Registry Offices across the country and at the Areeiro Registries Space in Lisbon (Presidência do Conselho de Ministros and ACIDI, I.P, 2010: 70).

During 2007, a specialised office created at the National Immigrant Support Centre (CNAI) to provide support in submitting nationality applications organised 40 staff training sessions. In total, 683 officials were trained on the new nationality law, exceeding the goal of 400 set out in the first Plan (Presidência do Conselho de Ministros and ACIDI, I.P, 2010: 70). Despite this, this Nationality Support Office was closed at the end of 2008, and its tasks were transferred to the Welcoming and Sorting Office at the CNAI.

The Central Registry Office (CRC) provides telephone support and answered 73,754 related calls during 2008-2009. In 2009, the CRC provided services in relation to a further 98,908 queries on site (Presidência do Conselho de Ministros and ACIDI, I.P, 2010: 71-72). The IRN also has an information service on nationality on its website. The *Second Annual Implementation Report on the Plan for Immigrant Integration, May 2008 – May 2009* highlighted efforts to disseminate information on the Nationality Law, but did not specify the numbers of nationality applications (Presidência do Conselho de Ministros and ACIDI, 2009: 36).

The *Final Implementation Report* on the first Plan, published in 2010, provides a statistical overview of changes in terms of access to Portuguese nationality from the coming into force of the new law and until the end of 2009. In relation to Measure 70, the internal deadlines for processing applications at the IRN and at the SEF Nationality Department were tightened and the average processing time for all applications for attribution and acquisition in 2008 was three months for minors and six months for adults, compared with over two years in 2006 (Presidência do Conselho de Ministros and ACIDI, I.P, 2010: 44).

Nevertheless, there are still some problems for applicants from countries where registries have been destroyed, and the process still needs to be facilitated for this group of applicants. In an article in the *Público* newspaper, Manuel Solla of the National Commission for the Legalisation of Immigrants was cited as saying that in the case of Angolans, for example, it is sometimes very difficult to locate official certificates, many of which were destroyed during a civil war. In the case of Indian nationals, when they request a criminal record, it is not issued at a national level, but at the provincial level (Pereira, 17.02.2009). However, in general, the objectives of the first *Plan* were exceeded, given the increased demand for Portuguese nationality in the years following the introduction of the new regime in 2006.

Looking towards the future, the second *Plan for Immigrant Integration* (2010-2013), approved by a resolution of the Presidency of the Council of Ministers in September 2010, includes, like the previous Plan, two measures in relation to nationality, representing a concern of the government to continue to improve the process, despite the fact that there is no longer a goal for the number of applications received. Measure 9 centres around language tests, with the objective of continuing to make the tests available, with four tests organised per year. Administrative Circular no. 60/2011 of 2 February 2011 further regulates the evaluation of knowledge of Portuguese language for

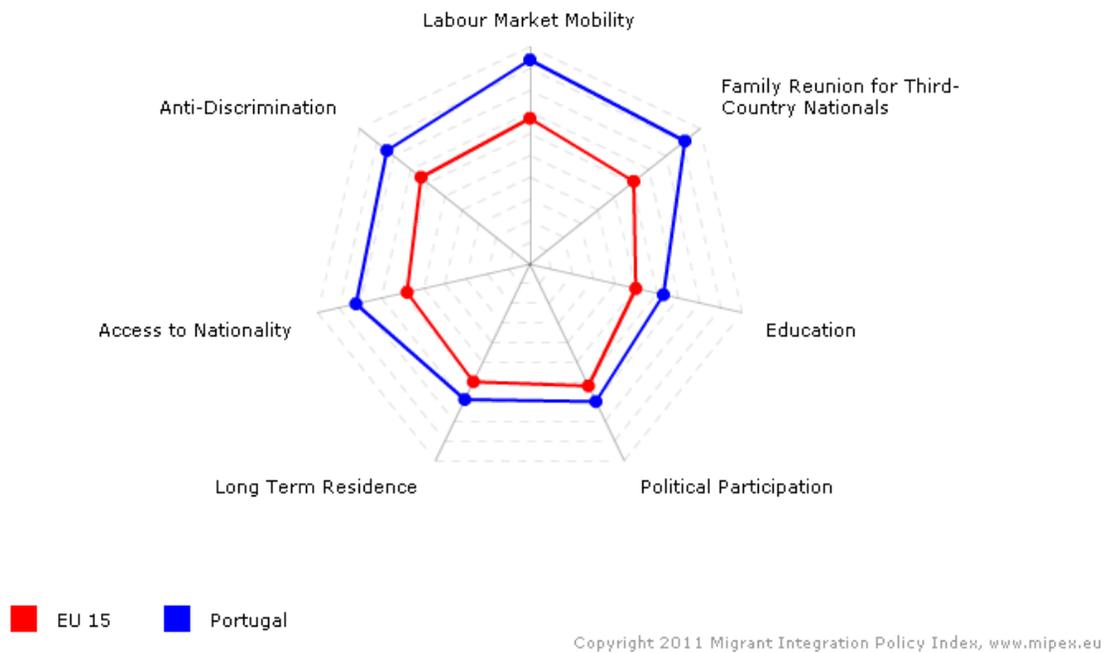
the purposes of the acquisition of Portuguese nationality by means of diagnostic tests taken specifically for this purpose at educational establishments and other institutions.

Meaure 49 seeks to continue to improve the processing of applications and the provision of information to potential applicants on conditions of access. It also recognises that there are some problems in relation to pending applications and therefore foresees a reduction of 10% in the internal processing time and answering 40,000 requests for information on the status of pending applications, an indicator that is higher than the average in 2008 and 2009 and would represent a welcome improvement (Presidência do Conselho de Ministros, 2010). Even still, it seems that the indicators of the second Plan are not so ambitious, which indicates that, with the advances of previous years, it is believed that the majority of the government's objectives in relation to nationality have already been achieved.

The Migrant Integration Policy Index (MIPEX) published in 2007, which was informed by data relating to the period just after the new law came into force, placed Portugal in third place among 28 countries in relation to access to nationality. It concluded that the State could still improve access to Portuguese nationality: "Despite the 17 April 2006 reform of the nationality law [...], nationality policies still have room for improvement" (MIPEX, 2007). Portugal's ranking in terms of eligibility for nationality was 67%, while for conditions for access it was 83%. The study emphasised that the status of naturalised citizen is not secure, because the State may withdraw nationality for various reasons, including due to the "inexistence of an effective connection to the national community", regardless of the length of time for which these citizens have been Portuguese nationals (except if this causes individuals to become stateless). Nevertheless, the study recognises that it is possible to have dual nationality, awarding Portugal 100% in this area (MIPEX, 2007). In the edition of MIPEX launched in February 2011 (referring to changes in nationality policy up to May 2010), Portugal emerges as the country – among 31 countries in Europe and North America – with the best and most effective nationality policy, combined with effective policies in other areas of integration (see Figure 7 below).

Figure 7: Migrant Integration Policy Index III (2010)

MIPEX Results: EU 15

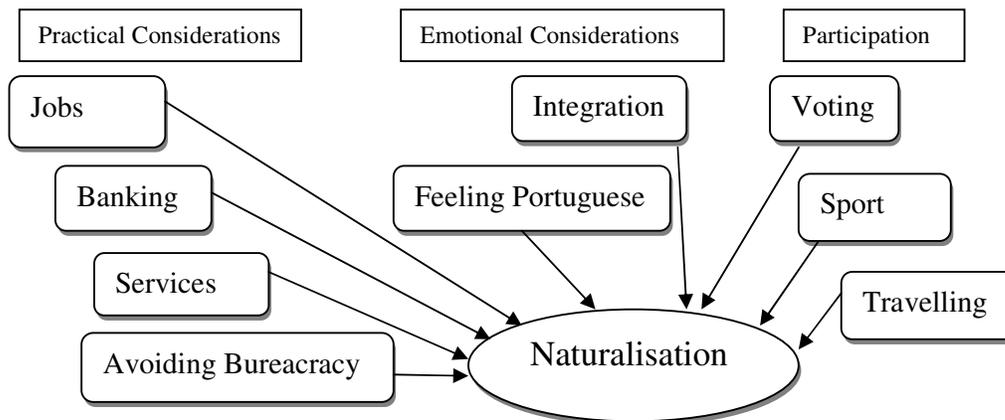


9. Consultation

Some of the recommendations and indications gathered in the interviews for this study will be set out here, with the caveat that this consultation was not based on a representative sample of the immigrants who apply for Portuguese nationality. It is therefore recommended that further consultation be undertaken with a larger sample of people, based partly on the orientations and contents indicated in this study.

In relation to the advantages of naturalisation from the perspective of immigrants, responses varied in the consultation from practical concerns to better rights and sentimental reasons. Some participants saw naturalisation as the conclusion of a process of full integration. Some people interviewed emphasised, however, that naturalisation is only advantageous if they do not lose their nationality of origin. It was detected, on the other hand, that there were a similar range of reasons suggested for not acquiring Portuguese nationality, which were ideological, patriotic, or based on the fact that they do not identify with Portugal, or else for practical reasons associated with the excess of documentation (although there have been improvements with the new law). In specific cases, people from countries that do not permit multiple nationality, such as Ukraine and China, saw this as a strong reason not to obtain citizenship.

Figure 8: The advantages of Naturalisation from the Point of View of Immigrants



Composed on the basis of interviews conducted by the author in the context of the study in 2008.

The benefits of the naturalisation of immigrants for the State were seen principally in terms of the impact that the phenomenon could have on demography or on population ageing in Portugal and the European Union, but also in relation to the cultural enrichment of society. Some of those interviewed also maintained that naturalised immigrants become somehow more legal, giving the State more control. The opinions analysed were divided in relation to whether the government should actually incentivise naturalisation – many considered that the new nationality law, which is more open, is an incentive in itself. Nevertheless, it was underlined that people should never feel compelled to naturalise.

In relation to the requirements that may be associated with the nationality law, the majority of those interviewed considered that six years of residence – or less – was

appropriate. Immigrants from Portuguese-speaking countries and immigrants from non-Portuguese-speaking countries alike, as well as the parliamentary deputies and the Registry Office official, agreed that the language test is an important element of the process of naturalisation, despite the fact that some people did suggest that it would be fairer if it was an oral test. Some of those interviewed raised the question of immigrants not having time to attend Portuguese courses or to study for the language test, due to professional commitments.

Nevertheless, opinions were not all in concordance in relation to the income requirements that were abolished in the new law – some deputies agreed with income requirements, while some immigrants rejected them as unfair. All of those interviewed for this study were against any requirements that would imply giving up nationality of origin, due to strongly expressed connections with the country of origin, or a possible desire to return. In relation to the question of the criminal record, the majority of those interviewed agreed with its application as a requirement, although for the reasons set out above, this is still not considered appropriate.

Political participation was considered very difficult for immigrants, even if they are admitted as activists in the main political parties. They can also be active through associations, voluntary organisations and religious organisations, among others. All of those interviewed thought participation very important, but some mentioned that immigrants may not have time to fully participate and so this should never be a condition for access to citizenship. Nevertheless, many of those consulted argued that there were few actual differences in participation between immigrants and naturalised citizens, indicating that the increased rights of long-term resident immigrants may contribute to reducing naturalisation rates in Portugal.

The European Union dimension to national citizenship was considered important in relation to work and mobility rights for new citizens, but also as adding to the responsibility of the Portuguese state in granting citizenship. The Registry Office official and the parliamentary deputies interviews referred to a possible harmonisation of nationality laws in the European Union in the future. The immigrants interviewed were mainly against the inclusion of a European perspective in the naturalisation procedures, but they did support initiatives to inform new EU citizens about the European Union itself.

10. Conclusions

For reasons related to its colonial experience, Portugal took some time to modernise its nationality laws. The more restrictive policy of the nineties therefore focused more on emigration than immigration policy. Compared with other EU Member States, the combination of the lack of controversy in relation to the theme of national citizenship, low rates of naturalisation and the absence of a strong extreme right party, made it possible to liberalise the policy in 2006.

The changes in the 2006 nationality law reflect recent trends in Western Europe, with the reduction in the importance of the principle of *ius sanguinis* (although there is still the possibility of attributing nationality to the grandchildren of Portuguese citizens), the acceptance of multiple nationality, and, above all, the rejection of preferential treatment for “co-ethnic immigrants” (Mouritsen in: Zapata-Barrero, 2009: 27) due to the abolition of preferential conditions for immigrants from Portuguese-speaking countries. It is notable that in Portugal, this preferential treatment was aimed at people considered to be culturally Portuguese on the basis of colonial links – citizens of African countries with Portuguese as an official language, Brazil and Macau. The new law further reflects internationalist trends in the context of human rights associated with the Council of Europe’s Convention on Nationality of 1997 and the mobilisation of associations and interest groups (Howard, 2009: 36; 66; 70).

The acquisition of Portuguese nationality by many immigrants is a central step in the process of becoming one of the “new Portuguese”. However, for these “new Portuguese” to be full citizens exercising all of their rights, robust integration, anti-racism and anti-discrimination policies play a fundamental role. In sum, the process of integration of an immigrant in Portugal does not reach its end with the acquisition of Portuguese nationality.

The characteristics of future citizenships in Europe are beginning to become visible, above all in the concept of stakeholder citizenship, whereby what is taken into account is an interest in the future of a country and not in belonging to the past of a nation-state. It is now time to plan a citizenship that is not strictly connected to nationality, as proposed by Kostakopoulou (2009). The issue is to define the substance and the level of connections necessary for the existence of a political relationship between a State and an individual (Klusmeyer, 2000: 5). Local citizenship rights associated with the place of residence are being reinforced, regardless of the nationality of origin of a person, as the fact of having the citizenship of the country in which one resides signifies stability and affiliation (Kalekin-Fishman *et al*, 2007: 26), as well as access to rights.

In this context, nationality policy in general should concentrate on the trend towards *ius domicilii* – the law of residence -, and less on the historical principles of *ius soli* – the law of the soil - and *ius sanguinis* – the law of the blood.

The adoption of the principle of *ius domicilii* in nationality law is however associated with the debate in relation to the welfare state and immigrants. At times, existing citizens are opposed to the granting of all social, economic and political rights to immigrants, as the perception is that neither they nor their ancestors have contributed to the social security system, to the creation of infrastructures and to the general

development of their country of residence. National culture and infrastructures are seen as the result of the work of nationals and the ancestors of nationals. A more rigorous analysis of reality shows that applicants for Portuguese nationality have lived for at least six years in Portugal, have generally paid taxes during those years to the State, contributed to social security and, in many cases, have themselves contributed to building up and improving the infrastructure of the country. As well as this, they may have contributed to the development of Portuguese society in various ways, whether scientific, artistic, linguistic, architectural or culinary, to name but a few. As a consequence, applicants for Portuguese nationality have already contributed to the present and future of Portugal, if not the past, and can therefore logically be classified stakeholders in society.

Another crucial debate in relation to access to nationality centres around the relationship between naturalisation and integration. Naturalisation was previously, and still is, seen as the culmination of a process of integration, which includes learning the language and the establishment of effective and affective connections with the country. Traditional countries of immigration such as Canada and the United States of America adopt a different approach, seeing the acquisition of nationality as a tool in the process of integration of an immigrant; one stage in a continuous journey of mutual learning.

On the basis of this study, it has also been concluded that in order to continue to improve nationality policy in Portugal, it is necessary to take into account the obstacles and disincentives that exist for potential applicants. This analysis and the accompanying recommendations are essential in view of the fact that the exclusion of some immigrants from national citizenship may have serious implications for their rights and for the future of Portuguese society. As argued by Kalekin-Fishman (Kalekin-Fishman *et al.*, 2007: 10):

Socio-cultural exclusion from national membership has long-range effects on the emotional adjustment of migrants and on the viability of their identities.

A simple lack of knowledge of the changes introduced by the new law may constitute a reason why some immigrants do not acquire nationality. This study points to the influence of the old legislative framework on immigrants not applying for nationality when they are already settled in Portugal. At the time at which they reached six years of residence, they did not have the right to national citizenship. This situation is aggravated for those who were excluded in the context of the 1975 law.

Despite the fact that the procedures for the attribution and acquisition of Portuguese nationality are much clearer and more comprehensible under the new regime, there are still misunderstandings and confusion among the immigrant community, as identified in the interviews conducted for this study. Therefore it is recommended that the information campaign launched with the introduction of the new law and foreseen in measure 49 of the second *Plan for Immigrant Integration* is continued.

The active promotion of naturalisation, seen as a very positive factor in Portugal, should continue, covering indicators and goals for the number of immigrants who have access to nationality and the numbers who actually naturalise. The Portuguese system of managing nationality applications, involving cooperation between the SEF Nationality Department, the Central Registry Office and the consular authorities of the countries of origin, has significantly improved. Various documents are now obtained through

official channels and must not be separately requested by the applicant, and meetings with representatives of the governments of countries of origin have had some effect. The process is also now more accessible in terms of the associated cost, although in view of low salaries in general in Portugal and the over-representation of immigrants among those who are paid lower salaries, the attendant cost should be further reduced and waived in cases of economic difficulties (the law does foresee exemption from fees for applicants who do not earn enough income to cover the costs of the process).

According to the data from reports on the implementation of the first *Plan for Immigrant Integration*, both SEF and the Central Registry Office have improved processing times. However, many applicants still wait for months and months for a response from consular authorities or in order to take the official Portuguese language test. Some immigrants interviewed mentioned that sometimes the delays in the possibility to sit the official language test lead to the validity of the other documents for the application running out and so all the documents must be requested and obtained again.

This study did not cover the analysis of the quality of communication between the State and the applicant in relation to the application process, and of the provision of justifications and clarifications on the right to appeal, an analysis that should be carried out in future studies. However, it should be noted that the number of applications that are rejected is relatively low – although that number does not include potential applicants who have dropped out of the process for various reasons before finalising the procedure.

Of course there has never been in any country, nor is there now in Portugal, total consensus in relation to nationality policy. Perhaps some Portuguese people, whether they are of Portuguese or immigrant origin, do not agree with all of the requirements and consider that the new law is either too rigid and demanding, or too generous. This leads to Howard's conclusion: "In short, the 2006 citizenship policy reform in Portugal represents a relatively uncontested elite-led promotion of inclusion and rights through the extension of citizenship to immigrants" (Howard, 2009: 90). It is therefore simply emphasised here that many immigrants and people born in Portugal who did not previously have citizenship rights now have access to Portuguese nationality, which in itself indicates that the new legal framework to a certain extent responds to the needs of thousands of immigrants who choose to become Portuguese.

11. Recommendations

(1) Requirements

- The requirement not to have been convicted of a crime with a prison sentence of three years or over should have a time limit in relation to the number of years that this sentence comprises. It would be advisable to allow the applicants who committed the crime in question over ten years ago, for example, to have access to Portuguese nationality, as the criminal law itself foresees the rehabilitation of the individual who has committed the crime after the prison sentence has been served. This recommendation aims to avoid the “double penalisation” of former criminals who have already served their sentence.

- Also associated with this requirement, there is currently a practice of requiring the criminal record of children who are acquiring nationality, or requiring a criminal record from a country where the applicant has never resided (usually the country of origin of their parents). The criminal record from a country that the applicant left when they were still a child may also be required. As obtaining a criminal record in these situations may be very difficult and even require a trip to that country, it should be considered that such a requirement is neither realistic nor justifiable and should be removed in these cases. The same applies to the case of countries where there is evidence that the records have been destroyed or lost.

- For all categories of applicants there was not much resistance to the requirement for six years of legal residence, but this requirement contrasts with the declarations that the new law places Portugal among the most liberal countries on this issue. There are countries such as Belgium and Ireland that grant access to nationality to immigrants with three or five years of regular residence. It should be taken into account that six years living and working in Portugal without access to national political participation and other associated rights does not facilitate full integration.

(2) Cost of the Process

- The current cost of the process of acquisition of nationality for adults - €170 – is not excessive, but it may represent a disincentive for potential applicants with limited means. Together with the costs of obtaining the required documents, there are expenses associated with the translation of documents that may be impossible to afford for some immigrants. Therefore, in the cases where it is necessary, the State should grant exemption from the fee, as well as negotiating with consular authorities in countries of origin to facilitate the process in financial terms, and speed up the procedures. It is important to highlight that the current law already foresees a *droit subjectif* to nationality and so all applicants should have access under similar conditions.

(3) Dual Nationality

- All of those interviewed for the study argue for the importance of the nationality law providing for dual or multiple nationality. Immigrants who are originally from Ukraine

or China, however, shared their lack of motivation to acquire Portuguese nationality as their countries of origin would then oblige them to give up their nationality of origin. This study therefore recommends the promotion of dialogue with the governments of countries of origin that do not permit dual citizenship, in order to agree upon a better situation for this category of potential applicants so that they can fully participate in Portuguese society.

(4) Portuguese Language Tests

- All of those consulted for the purposes of this study agreed with the application of a language test to applicants who could not prove their knowledge by any other means. However, there are a series of problems with the administration of the tests, above all in relation to the website and the waiting times in order to do the test. Despite the fact that the possibility does exist to do the test orally, this option is little known and applicants should be better informed about this and other measures. It is also necessary to disseminate better information in relation to the option of submitting a proof of knowledge from any educational establishment in any Portuguese-speaking country to avoid applicants from countries within the Community of Portuguese-Language Countries (CPLP) having to take the test even though they are native or fluent speakers.

(5) Nationality and families

- Naturalisation by at least one parent should automatically imply the naturalisation of all minor children. Otherwise, the unity of the family will be put in question, and in this context, Portugal is not currently in consonance with the majority of the EU15 countries. In the new millennium, decades after the failure of the *Gastarbeiter* system, it is necessary to recognise, as Max Frisch famously commented in 1965, that these immigrants are human beings – with families – and not just workers. The same principle applies to the naturalisation of spouses and partners, which, even if a minimum period of marriage duration is required, should proceed rapidly. This conforms to the second Modification Protocol of the European Convention on the reduction of cases of multiple nationality, which recognised the necessity of promoting unity of nationality within the same family.

- The attribution of nationality to the children of at least one parent who has had regular residence for at least six years should also be applied to the children of parents who do not have regular residence, in order to not penalise children who are born in Portugal for the status of their parents, and in order that they do not have to spend the first ten years of their lives in Portugal without access to Portuguese nationality (until they finish the first four years of primary school).

(6) Applicants for nationality

- In 1836, a law was passed in Portugal that declared that foreigners who had been persecuted in their country of origin due to their liberal ideas could have access to naturalisation (Ramos, 2004: 553). Refugees were not interviewed for this study, but international research has shown that people with refugee status tend to apply for

naturalisation in much greater numbers than the rest of the immigrant population (Bloemraad in: Bevelander and DeVoretz, 2008: 16). Given that Portugal is one of the EU countries with the lowest absolute and relative number of applicants for asylum, it is logical that they do not appear significantly in the naturalisation statistics. However, although the numbers are currently low in Portugal, those with international or subsidiary protection and stateless people who were not born in Portugal should benefit from a more open regime in relation to the acquisition of nationality, such as, for example, with a reduction in the requirement of six years of residence and a programme for the promotion of naturalisation.

The fact that there are currently very low numbers of asylum applicants and refugees in Portugal does not necessarily mean that there will not be greater numbers in the future (for example in the context of a programme of burden-sharing at a European level in relation to granting international protection,¹¹ as discussed in March 2011 as a potential solution for people who were fleeing political turbulence in North Africa). Therefore the existing law should be amended in this sense.

- Portugal already has a tradition of having facilities within the legislative framework for immigrants who wish to regularise their situation. This is reflected in the 2006 nationality law, which offers the possibility of acquiring nationality after ten years of residence without legal status. The only problematic characteristic of this provision is the element of discretion, which should be removed, establishing a *droit subjectif* for all irregular immigrants who can provide evidence of ten years of residence.

- The Government should in as far as possible follow the development of new concepts of citizenship in the academic world and among the public in general. As analysed in this study, the concept of stakeholder citizenship is a very appropriate paradigm to understand a form of citizenship that would be most egalitarian. Immigrants who only remain for a small number of years clearly have a less significant interest in the future of the country and therefore would remain outside of these provisions. People who have resided for a long period and choose the status that allows them to fully participate in Portuguese society would base their national belonging on residence in a country instead of on ethnic ties.

(7) Dissemination of information, transparency of the process and providing information

- The procedures inherent in the process of acquiring nationality should be fair and well defined, and the requirements should be clearly communicated to all potential applicants. If there are no transparent rules for the acquisition of nationality, the policy and the regime on paper will not correspond to reality. In this sense, the functioning of the related bureaucracy should be continuously improved.

- The consultation showed that there is a certain confusion among some immigrants in relation to the relationship between legal status and the status of having Portuguese nationality (“having the ID card”). This means that it is necessary to provide clear

¹¹ Foreseen in Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

information that explains the difference between being a regular resident and a Portuguese citizen, permitting immigrants to choose the option that is most appropriate for them, and avoiding a situation where they opt for nationality just because they consider it to be the “most legal status possible”.

- In order to facilitate access to Portuguese nationality for all those who are eligible and who wish to do so, the information campaigns and awareness-raising campaigns on the nationality law should be continued. It should not be assumed that with the change in the law, the issue is “resolved”. Increasing the numbers of naturalisations should be part of future *Plans for Immigrant Integration*, with measures and objectives that promote the participation of all of those settled in Portugal. For this reason also, consideration should be given to re-opening the Nationality Support Office at the National Immigrant Support Centre (CNAI), in order to promote and facilitate naturalisation.

- In order to promote the acquisition of nationality, it is recommended that a policy be implemented to make Portuguese citizenship more attractive for European Union citizens resident in Portugal and not only aimed at citizens of third countries, in order to promote the participation of all settled residents in the national democratic process.

- Under the current regulation, the registration of new citizens for the electoral process is not automatic. It is advised that this take place automatically, in order to promote the political participation of those who have naturalised.

12. Final Note

The 2006 nationality law introduced provisions into the processes of attribution and acquisition of Portuguese national citizenship that are largely more egalitarian, and was consequently recognised with the highest score in terms of access to nationality in the *Migrant Integration Policy Index III* for 2010, in comparison with 31 countries in Europe and North America. Therefore, and in spite of some fundamental exceptions, the evaluation of the new regime, taking into account history, statistics, consultation and the theoretical framework for the future, is largely positive. Looking towards the decades to come, the challenge will be to continue to go against current and future trends in Europe of confusing nationality policy with immigrant admission policy and security issues. Only then will Portugal manage to offer, strengthen and defend a policy that is based on rights for citizens of various origins as a fundamental element of what it means to “be Portuguese” both in Portugal and abroad.

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